

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

STATE OF TEXAS,)
GUN OWNERS OF AMERICA, INC.,)
GUN OWNERS FOUNDATION, and)
BRADY BROWN,)

Plaintiffs,)

v.)

BUREAU OF ALCOHOL, TOBACCO,)
FIREARMS AND EXPLOSIVES, UNITED)
STATES DEPARTMENT OF JUSTICE, and)
STEVEN M. DETTELBACH in his official)
capacity AS THE DIRECTOR OF ATF,)

Defendants.)

Case No. 6:23-cv-00013

JOINT STATUS REPORT

In July of this year, the Court stayed proceedings in this case pending the Fifth Circuit’s resolution of Defendants’ interlocutory appeal from the Court’s order granting Plaintiffs a preliminary injunction, which had been consolidated with several related appeals. *See* ECF No. 92. On August 26, 2024, the Fifth Circuit dismissed the consolidated appeals as moot in light of the U.S. District Court for the Northern District of Texas’s vacatur of the rule challenged in this case and the others. *See Watterson v. ATF*, No. 23-40556 (5th Cir. Aug. 26, 2024), ECF No. 134-1. In light of that decision, the Court asked the parties to submit a joint status report by August 30, 2024, addressing the decision’s impact on this case. Accordingly, the parties respectfully submit this status report and provide their respective positions below.

Plaintiffs' Position

Plaintiffs believe that the Fifth Circuit provided substantive guidance in *Mock v. Garland*, 75 F.4th 563 (5th Cir. 2023) on the likely violation of the Administrative Procedure Act (“APA”) as “the Final Rule was not a logical outgrowth of the Proposed Rule.” *Id.* at 586.

Additionally, a district court vacated the Final Rule in *Mock v. Garland*, No. 4:23-CV-00095-O, 2024 U.S. Dist. LEXIS 105230, at *18 (N.D. Tex. June 13, 2024) (district court “**GRANTS** Plaintiffs' Motion for Summary Judgment on the grounds that the Final Rule violated the APA's procedural requirements because it was arbitrary and capricious and was not a logical outgrowth of the Proposed Rule; **DENIES** Defendants' Cross Motion for Summary Judgment; **DENIES** Plaintiffs' request for a permanent injunction; and **VACATES** the Final Rule.”) While this decision is not binding on this Court, it is instructive and provides the applicable framework for a similar ruling should this Court choose to adopt it.

Subsequently, the Eighth Circuit issued its opinion on appeal of a denial of a preliminary injunction, stating that “We conclude the Coalition is likely to succeed on the merits of its arbitrary-and-capricious challenge, so we reverse and remand to the district court.” *Firearms Regul. Accountability Coal., Inc. v. Garland*, No. 23-3230, 2024 U.S. App. LEXIS 20058, at *5 (8th Cir. Aug. 9, 2024).

In other words, two Circuit Courts have said that plaintiffs are likely to succeed on APA in the preliminary injunction posture, and one district court has vacated the Final

Rule. As such, Plaintiffs' position is that this Court's stay should be lifted and the Court should rule on the cross-motions that have been filed by the parties.

Defendants' Position

Defendants submit that continuing the stay in this matter pending final resolution of the appeal in *Mock v. Garland*, 24-10743 (5th Cir.), would be the most efficient approach for the Court and the parties. The Fifth Circuit's decision will provide this Court with significant guidance in resolving the parties' pending cross-motions for summary judgment—if not a dispositive rule of decision. Moreover, if the U.S. District Court for the Northern District of Texas's vacatur of the rule is ultimately affirmed on appeal, any resolution of this case will lack practical significance.

* * *

Dated August 30, 2024.

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Respectfully submitted.

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CERTIFICATE OF SERVICE

I certify that on August 30, 2024, I filed this motion through the Court's CM/ECF system, which automatically served it upon all counsel of record.

/s/ Christina Cella
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